infrequently contain a column for the signature of the workmen paid, and in order to perpetrate the fraud the signature thereto might be forged. This might be a case of forgery of the receipt of the workman. Here, however, the alleged forged signature, if forged at all, simply refers back to an appearance before Abdul Rahman and has no legal effect on the rights of the parties. It is a record or representation of fact.

For all the above reasons, I am not satisfied that a fraud by the appellant has been properly proved, or that any offence of forgery has been proved, against the accused. The conviction is therefore quashed and the appellant should be discharged.

Appeal Allowed.

F. M. S. REPORTS.

POI ENG LIAN v. THE OFFICIAL ASSIGNEE, F.M.S.

[Appellate Bankruptcy Jurisdiction (Trusted, C.J., F.M.S., McElwaine, C.J., S.S. and Aitken, J. November 20, 1941]

Bankruptcy Enactment, Sections 17 (vii) 108 and 111—Bankruptcy Rules 88 and 270—Application that a bankrupt should be prosecuted under Section 108 of Bankruptcy Enactment—Application must be made by motion—Procedure at hearing—Use of notes of public examination in evidence—Whether Judge can act ex proprio motu at end of public examination and call on bankrupt to show cause.

In this case the appellant was convicted on a motion by the Official Assignee to the Court for an order under Section 108 (c) and (d) of the Bankruptcy Enactment that the bankrupt undergo imprisonment for a term not exceeding three months on the ground that (1) he has contracted debts, provable in bankruptcy without having any reasonable grounds or expectation of being able to pay and (2) he has brought on or contributed to his bankruptcy by rash speculation. At the hearing the Official Assignee had filed his notice of motion and affidavits one of which exhibited a copy of the Public Examination. The Official Assignee gave evidence and produced a certified copy of the bankrupt's public examination. The bankrupt stated that he did not wish to say anything. The appellant was thereupon convicted and sentenced to 2 months' simple imprisonment. On appeal it was argued (1) that the Judge was wrong in trying the appellant otherwise than under the provisions of the Criminal Procedure Code as required by Section 37 of the Code (2) that no charges were ever framed or if the notice of motion purported to set out charges, these charges were too wide and did not give sufficient particulars of the offence.

Held, (1) that the Criminal Procedure Code has nothing to do with a case like the present;

(2) the present appeal was an appeal in bankruptcy and the procedure adopted was correct;

(3) that under Section 111 of the Bankruptcy Enactment a charge setting forth the substance of the offence charged is not a bad charge, even if detailed particulars are not given;

(4) that the Judge should in this case have passed a sentence on each charge, instead of passing a single sentence.

Cases referred to :—

(1) *Re Chops Loh Ban Chuan and Chuan Bee* (1933) 2 M.L.J. 286.

(2) *Re Khoo Soek Wan* 11 S.S.L.R. 19.

(3) *Rex v. Scott* Dears and Bell 47.

(4) *R. v. Coote* L.R. 4 P.C. 599.

APPEAL IN BANKRUPTCY.

Charlesworth for the Appellant.

Mills for the Respondent.

McElwaine, C. J. :—Poi Eng Lian was publicly examined in Bankruptcy before Horne J. on 31st October 1940, and after the close of the examination the Judge noted "I am of opinion that the bankrupt has on his own statements in the course of this examination caused it to appear as if his bankruptcy has been brought on by rash speculation and I direct the Official Assignee to take the necessary steps to submit the matter to the Public Prosecutor."

No steps were taken by the Public Prosecutor and on 16th June 1941 one of the creditors moved the court for an order under section 110 of the Bankruptcy Enactment that the bankrupt be prosecuted under section 108 (c) and (d).

On the hearing of the motion Horne J. noted "I think the matter should be gone into more fully than it apparently has been" and he made an order in terms.

Pursuant to this Order the Official Assignee moved the Court for an order under section 108 (c) and (d) of the Bankruptcy Enactment that the bankrupt undergo imprisonment for a term not exceeding three months on the grounds that

(1) He has contracted debts provable in bankruptcy without having any reasonable ground or expectation of being able to pay;

(2) He has brought on or contributed to his bankruptcy by rash speculation.

This motion came up for hearing on 17th July 1941. The Official Assignee filed his notice of motion and affidavits one of which exhibited a copy of the Public Examination.

The Bankrupt appeared and pleaded not guilty. Horne J. stated that "The Court requires proof as in a criminal charge." Both the Official Assignee and the bankrupt asked for an adjournment which was granted.

On 18th August Mr. Mills appeared on behalf the Official Assignee and the bankrupt appeared in person.

The Official Assignee was called as a witness and he produced a certified copy of the bankrupt's public examination.

The bankrupt then stated that he did not wish to say anything.

The learned Judge convicted the bankrupt and sentenced him to two months' simple imprisonment.

The only evidence of the offence was the bankrupt's public examination from which it appeared that he was the son of a wealthy father, that he never worked in his life, that he had no property at all except a monthly allowance of $50. His total liabilities were $20,000. His 27 creditors were all money lenders who, he said had advanced $10,000. He proceeded "I borrowed all this money to buy lottery tickets. My idea of buying these tickets was to get rich. I admit I have been reckless in losing money in this way".

There was nothing in his public examination to qualify or explain any of these statements, and, as I have mentioned, when the official Assignee's motion was before the Court the bankrupt offered no explanation.

Several grounds of appeal were raised. The first was that the Judge was wrong in trying the appellant otherwise than under the provisions of the Criminal Procedure Code as required by section 37 of the Code.

In my opinion the Criminal Procedure Code has nothing to do with a case like the present.

Bankruptcy Rule 88 provides that the provisions on procedure for the time being in force respecting appeals from the Supreme Court in its ordinary civil jurisdiction shall apply to appeals in bankruptcy, and Rule 270 provides that application under section 108 of the Enactment shall be made by motion. Appeals from an order made under section 108 are appeals in bankruptcy, while appeals from conviction under section 102 are not appeals in bankruptcy. The present is an appeal in bankruptcy and the procedure adopted was correct.

The second ground was that no charges were ever framed or, if the notice of motion purported to set out charges, those charges were too wide and did not give sufficient particulars of the offence.

Section 111 of the Enactment is as follows:— "In a charge of an offence under this enactment it shall be sufficient to set forth the substance of the offence or as near thereto as circumstances admit without alleging or setting forth any debt, act of bankruptcy, adjudication, or any proceedings in, or order, warrant, or document of, any Court acting under the Enactment."

Natural justice entitles a man to know exactly the charge he has to face, but a charge setting forth the substance of the offence charged in the words of the Enactment is not a bad charge even if detailed particulars are not given. If the accused has not sufficient particulars he can ask for them and he would no doubt be given an adjournment should justice so require.

The bankrupt did not ask for particulars. It is quite clear from the public examination that all these debts were contracted for the same purpose, and had particulars been asked for, each of the 27 promissory notes would have been set out with the allegation that the money borrowed was to be used in the purchase of lottery tickets. It might well be that if the debts were of different kinds some particulars might be desirable as many of the debts might not fall under section 108 at all, but that is not this case.

We were referred to the Court of Appeal case of *Chop Loh Ban Chuan* and *Chuan Bee*[1] but that case appears to have little bearing on the present. What that case decided was that the Judge before whom the public examination was held could not, *ex proprio motu*, at the close of the examination, call upon the bankrupt to show cause and then on his failure to show cause, commit him to prison. It is obvious that when such a procedure is adopted the bankrupt may be in considerable doubt of the charge he has to meet, he has little opportunity of getting necessary particulars or of obtaining legal aid, or of adducing further evidence. None of these disadvantages were caused by the procedure in the present case.

I pause to observe that in the *Chop Loh Ban Chuan and Chuan Bee* case no reference appears to have been

made to the Colony Bankruptcy Rule 273 (which corresponds to the F.M.S. Rule 270). In the Colony Rule the last three lines "but this rule shall not apply to any application made by the Official Assignee under section 107A (now section 114) of the Ordinance. Any such application must be made by motion supported by affidavit" were added in June 1910 and appears to me to get rid of the *ex proprio motu* dicta in *Re Khoo Seok Wan and Re Sarkies and Johannes*[2], which nearly fifteen years later troubled the Court of Appeal in the *Chops Loh Ban Chuan and Chuan Bee* case.

The debtor on his public examination is bound to answer all questions as the Court puts or allows to be put to him. Section 17 (vii) enacts that the notes of the examination taken down by the Registrar shall be read over to and signed by the bankrupt and may thereupon be used in evidence against him.

That examination provided ample evidence on which to convict in the absence of any other evidence qualifying or explaining or amplifying the answers given at the public examination. The appellant had ample opportunity to produce the further evidence if it existed.

It was suggested that the appellant may have been misled by the Judge's statement at an earlier hearing that he would require the case to be proved like a criminal case. It does not appear how this could mislead, and in any case the charge was so proved. *Rex v. Scott*[3]; *Rex v. Coote*[4].

In my opinion the conviction on each charge was correct. There should have been a sentence on each charge. A single sentence was passed which might indicate that the learned Judge sentenced the appellant to two months on each charge concurrently or to one month on each charge consecutively.

I would formally amend the conviction by imposing two months simple imprisonment on each charge, the sentences to run concurrently.

Subject to this correction I would dismiss the appeal.

Appeal Dismissed.